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No. 04-1113

IN THE
# Supreme Court of the United States

JOHN SOPHOCLEUS, et ux.,
*Petitioners,*

v.

ALABAMA DEPARTMENT OF TRANSPORTATION, et al.,
*Respondents.*

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

## BRIEF IN OPPOSITION FOR RESPONDENTS ALABAMA DEPARTMENT OF TRANSPORTATION, TODD, BOWLIN, BUTTS, AND LEONARD

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## QUESTION PRESENTED
(Restated)

Did the Court of Appeals for the Eleventh Circuit correctly affirm the district court's dismissal for lack of subject-matter jurisdiction under the *Rooker-Feldman* doctrine where: (i) Petitioners' claims are "inextricably intertwined" with a state-court condemnation judgment; and (ii) Petitioners raised or could have raised their claims in the condemnation proceedings in state court?

## TABLE OF CONTENTS

QUESTION PRESENTED ..... i

TABLE OF AUTHORITIES ..... iii

BRIEF IN OPPOSITION FOR RESPONDENTS ALABAMA DEPARTMENT OF TRANSPORTATION, TODD, BOWLIN, BUTTS, AND LEONARD ..... 1

OPINIONS BELOW ..... 1

CONSTITUTIONAL AND STATUTORY PROVISIONS .. 1

STATEMENT ..... 3

REASONS FOR DENYING THE PETITION ..... 7

I. The Claims in This Action Are "Inextricably Intertwined" With the Judgment in the State-Court Condemnation Proceedings Against Petitioners, and Petitioners Raised or Could Have Raised Their Claims in State Court ..... 7

A. Petitioners' Claims Are "Inextricably Intertwined" with the State-Court Judgment ..... 7

B. Petitioners Raised or Could Have Raised Their Claims in State Court ..... 10

II. Petitioners Are Inviting the Federal Courts to Review and Reject the State-Court Judgment in Their Condemnation Proceedings ..... 11

III. Petitioners Allege No Conflict in the Circuits, and this Case Presents a Poor Vehicle for Further Refinement of the *Rooker-Feldman* Doctrine ..... 12

CONCLUSION ..... 14

## TABLE OF AUTHORITIES

### Cases

*Allegheny County* v. *Frank Mashuda Co.*,
360 U.S. 185 (1959) ..... 12

*Anderson* v. *Charter Township of Ypsilanti*,
266 F.3d 487 (6th Cir. 2001) ..... 9

*Centifanti* v. *Nix*,
865 F.2d 1422 (3d Cir. 1989) ..... 8

*District of Columbia Court of Appeals* v. *Feldman*,
460 U.S. 462 (1983) ..... *passim*

*Ex parte Palughi*,
494 So. 2d 404 (Ala. 1986) ..... 10, 11

*Exxon Mobil Corp.* v. *Saudi Basic Indus. Corp.*,
125 S. Ct. 1517 (2005) ..... 7–8, 10, 11, 12

*Florence* v. *Williams*,
439 So. 2d 83 (Ala. 1983) ..... 13

*Fontana Empire Ctr., LLC* v. *City of Fontana*,
307 F.3d 987 (9th Cir. 2002) ..... 9

*Garry* v. *Geils*,
82 F.3d 1362 (7th Cir. 1996) ..... 7, 9

*Gober* v. *Stubbs*,
682 So. 2d 430 (Ala. 1996) ..... 13

*Hachamovitch* v. *DeBuono*,
159 F.3d 687 (2d Cir. 1998) ..... 8

*Hendersonville Light & Power Co.* v. *Blue Ridge Interurban Ry. Co.*, 243 U.S. 563 (1917) ..... 13

*Hill* v. *Town of Conway*,
193 F.3d 33 (1st Cir. 1999) ..... 8

*Johnson* v. *Way Cool Mfg.*,
20 Fed. Appx. 895 (Fed. Cir. 2001) ..... 9

*Kaukauna Water Power Co.* v. *Green Bay & Miss. Canal Co.*, 142 U.S. 254 (1891) ..... 13

*Keene Corp.* v. *Cass*, 908 F.2d 293 (8th Cir. 1990) ..... 9

*Lewis* v. *Anderson*, 308 F.3d *768* (7th Cir. 2002), *cert. denied*, 538 U.S. 908 (2003) ..... 9

*N. Ward Co.* v. *Bd. of Street Commr's of City of Boston*, 217 Mass. 381, 104 N.E. 965 (1914) ..... 13

*Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987) ..... 8

*Plyler* v. *Moore*, 129 F.3d 728 (*4th* Cir. 1997), *cert. denied*, 524 U.S. 945 (1998) ..... 8

*Redevelopment Agency of City & County of San Francisco* v. *Hayes*, 122 Cal. App. 2d 777, 266 P.2d 105, *cert. denied*, 348 U.S. 897 (1954) ..... 13

*Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923) ..... *passim*

*Siegel* v. *LePore*, 234 F.3d 1163 (11th Cir. 2000) ..... 9

*State* v. *Reynolds*, 887 So. 2d 84 (Ala. 2004) ..... 10

*Swan Lake Hunting Club* v. *United States*, 381 F.2d 238 (5th Cir. 1967) ..... 13

*United States* v. Chandler-*Dunbar Water Power Co.*, 229 U.S. 53 (1913) ..... 13

*Varallo* v. *Sup. Ct. of Colo.*, 176 F.3d 490, 1999 WL 140161 (10th Cir. Mar. 16, 1999) ..... 9

## Constitutional Provisions

U.S. Const. amend. V ..... 1

U.S. Const. amend. XIV, § 1 ..... 1

## Statutes

42 U.S.C. § 1983 (2000). ..... 2

42 U.S.C. § 1985(3) (2000) ..... 2–3

Ala. Code § 18-1A-70 (1997) ..... 10, 11

Ala. Code § 18-1A-71 (1997) ..... 3

Ala. Code §§ 18-1A-279 to 18-1A-282 (1997) ..... 3

Ala. Code § 18-1A-283 (1997) ..... 3

Ala. Code § 18-1A-284 (1997) ..... 3

## Rules

Ala. R. Civ. P. 13 ..... 10

Ala. R. Civ. P. 14(a) ..... 10

## Other Authorities

26 Am. Jur. 2d *Eminent Domain* § 55 (1996) ..... 14

29A C.J.S. *Eminent Domain* § 29(c) (1992) ..... 14

*Eminent Domain: Combination of Public and Private Uses or Purposes*, 53 A.L.R. 9 (1928) ..... 13

Suzanna Sherry, *Judicial Federalism in the Trenches: The* Rooker-Feldman *Doctrine in Action*, 74 Notre Dame L. Rev. 1085 (1999) ..... 8

## BRIEF IN OPPOSITION FOR RESPONDENTS ALABAMA DEPARTMENT OF TRANSPORTATION, TODD, BOWLIN, BUTTS, AND LEONARD

Respondents Alabama Department of Transportation (ALDOT), and current and former ALDOT employees Margie Champion Todd, Paul Bowlin, Jimmy Butts, and DeJarvis Leonard, in their individual capacities, respectfully file this brief in opposition to the petition for a writ of certiorari filed by Petitioners John Sophocleus and Theresa Sophocleus.

## OPINIONS BELOW

The Court of Appeals' opinion, Pet. App. 1a–5a, is unreported; it is noted in a "Table of Decisions Without Reported Opinions" at 116 Fed. Appx. 246. The Court of Appeals' denial of rehearing en banc is noted at 124 Fed. Appx. 644. The district court's opinion and judgment dismissing this case for lack of subject-matter jurisdiction, Pet. App. 6a–32a, are reported at 305 F. Supp. 2d 1238.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

The Takings Clause of the Fifth Amendment to the United States Constitution provides:

> [N]or shall private property be taken for public use, without just compensation.

U.S. Const. amend. V.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . .

U.S. Const. amend. XIV, § 1.

Section 1983 of Title 42 of the United States Code provides, in relevant part, as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C. § 1983 (2000).

Section 1985 of Title 42 of the United States Code provides, in relevant part, as follows:

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in

> furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. § 1985(3) (2000).

## STATEMENT

In May 1998, the State of Alabama filed a petition for condemnation in the Probate Court of Lee County, Alabama, to condemn Petitioners' home for the purpose of widening U.S. Highway 280 from two to four lanes between Dadeville and Opelika, Alabama. Pet. App. 8a; *see* Ala. Code § 18-1A-71 (1997). After appointing commissioners to assess the value of Petitioners' property, *see* Ala. Code §§ 18-1A-279 to 18-1A-282 (1997), the probate court entered a Decree of Condemnation awarding Petitioners $85,000 for their property in August 1998. Pet. App. 8a. The State paid $85,000 into the probate court on August 7, *see* Ala. Code § 18-1A-284 (1997), and Petitioners received a letter demanding that they vacate their property by September 10, 1998. Pet. App. 8a.

Petitioners refused to vacate their home, however. *Id.* They also appealed the probate court decree to the Circuit Court of Lee County, Alabama, for a trial de novo. Pet. App. 9a; *see* Ala. Code § 18-1A-283 (1997). The State cross-appealed. Because Petitioners refused to vacate their property, in December 1998 the State also filed a separate eviction proceeding against Petitioners in the District Court of Lee County. Pet. App. 9a. After a trial in January 1999, the district court entered a writ of possession evicting Petitioners and turning over posses-

sion of their property to the State. Pet. App. 10a. Petitioners did not appeal their eviction, and moved out of their house on January 18, 1999. *Id.* at 10a–11a.

In the state district court eviction proceeding, Petitioner John Sophocleus filed a counter-affidavit stating "that 'officials from the Department of Transportation now intend to use my house . . . for use by public transportation officials for work purposes. Consequently, this property and the house located thereon are not currently needed for the construction of Highway 280 as the Department of Transportation has no intention of razing the house.'" Pet. App. at 9a–10a. Petitioners made similar allegations, and requested relief based on those allegations, in their state circuit court appeal in the condemnation proceeding:

> On August 11, 1999, the Sophocleuses filed an "Amended Appeal" in the condemnation case in the state trial court. In this pleading, the Sophocleuses stated that they were evicted in January 1999 "under allegations to the Court that there was an immediate need for the property and that the structures thereon would be immediately destroyed," but that "[d]espite these allegations to the court, the State failed and refused, for an unreasonable period of time, to destroy the Appellants' home and/or to make use of the condemned property." They further alleged that the actions of the State were "capricious, arbitrary and done in bad faith." They asked the court to "set aside the decision of the Commissioners" as to the proper compensation for their land, and to award "other, further or different relief, including but not limited to punitive damages, damages for mental anguish and expenses for the second relocation, as may be just and proper."

> Also on August 11, the Sophocleuses filed pre-trial contentions with the state trial court in which they repeated the allegations, made in their counter-affidavits in the eviction case, that in December 1998 "the State of Alabama had no current need for the condemned property and that the State intended to use the structures located on the property for storage, despite the fact that no just compensation had been paid for the same." They further alleged that since their eviction in January 1999, "their house remains intact and inhabitable."

Pet. App. 12a–13a (footnotes omitted).

The day before the condemnation proceeding was set for trial de novo, however, Petitioners settled with the State. Pet. App. 13a. "The Sophocleuses agreed to the condemnation[,] and the State agreed to pay them $145,000." *Id.* This amount was $60,000 more than the appraised fair-market value fixed by the commissioners in probate court. *See* Pet. App. 8a. The state circuit court then entered an order and decree of condemnation holding, in relevant part, as follows:

> "The parties to this cause reached a settlement and advised this Court of the same. Thereupon, the Court proceeded to hear the allegations of the application or petition for an order of condemnation, and upon the consideration of said application and with the consent and agreement of the parties and for good cause shown, it is the opinion and judgment of the Court that the allegations of said petition are true, and that it is necessary that the property described in Exhibit "A" be condemned for the uses and purposes stated in said petition and that the said application for order of condemnation should be granted."

Pet. App. 13a–14a. Petitioners' house was razed in November 1999, after which the Highway 280 expansion

project was completed and now occupies the land where the house was located. Pet. App. 14a.

In May 2000—nearly nine months after the state circuit court entered its order and decree of condemnation—Petitioners filed this action in the United States District Court for the Middle District of Alabama. After the case was reassigned from a magistrate judge to a district judge, the district court dismissed the case for lack of subject-matter jurisdiction under the *Rooker-Feldman* doctrine. Disagreeing with the magistrate judge, the district court held that Petitioners' federal claims were "inextricably intertwined" with the state-court judgment in their condemnation proceedings. Pet. App. 21a–25a.[1] The court also held that Petitioners had actually presented their claims, albeit in a different form, in the state-court condemnation proceedings, Pet. App. 19a–20a, and that "even if they had not raised their claims in state court, [they] certainly had the opportunity to do so," Pet. App. 26a–27a. The court also concluded that Petitioners' claims were barred under *Rooker-Feldman* although the factual predicate for those claims did not arise until after the State initiated the condemnation proceedings. Pet. App. 27a–30a.

The Court of Appeals for the Eleventh Circuit affirmed the district court's dismissal in a brief, unreported *per curiam* opinion. Pet. App. 1a–5a. Based on its review of the record, the court of appeals concluded that

> the district court did not err by concluding, for *Rooker-Feldman* purposes, that this claim is inextricably intertwined with the state condemnation proceedings. As the Seventh Circuit put it in an analogous case, if Appellants meant to challenge

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[1] The district court also held that it was not required to follow the magistrate judge's conclusions under the law-of-the-case doctrine. Pet. App. 15a–17a.

> the state condemnation proceeding as unconstitution, "they should have done so through the Illinois condemnation process, and ultimately to the United States Supreme Court if necessary."

Pet. App. 5a (quoting *Garry* v. *Geils*, 82 F.3d 1362, 1368–69 (7th Cir. 1996)). The court of appeals also agreed that Petitioners had the opportunity to raise their arguments in the state-court proceedings. *Id.* Accordingly, the court of appeals "affirm[ed] the district court's dismissal of this case for lack of subject-matter jurisdiction." *Id.*

## REASONS FOR DENYING THE PETITION

### I. The Claims in This Action Are "Inextricably Intertwined" With the Judgment in the State-Court Condemnation Proceedings Against Petitioners, and Petitioners Raised or Could Have Raised Their Claims in State Court.

#### A. Petitioners' Claims Are "Inextricably Intertwined" with the State-Court Judgment.

In *Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923), this Court held that the federal district courts' jurisdiction is "strictly original," and that "no court other than this court could entertain a proceeding to reverse or modify" a state-court judgment. *Id.* at 416. Sixty years later, in *District of Columbia Court of Appeals* v. *Feldman*, 460 U.S. 462 (1983), this Court noted that "[i]f the constitutional claims presented to a United States district court are *inextricably intertwined* with the state court's denial in a judicial proceeding of a particular plaintiff's application for admission to the state bar, then the district court is in essence being called upon to review the state-court decision. This the district court may not do." *Id.* at 482 n.16 (emphasis added). Thus, as the Court noted earlier this year, in *Feldman*, the Court "explained that a district court could not entertain constitutional

claims attacking a state-court judgment, even if the state court had not passed directly on those claims, when the constitutional attack was 'inextricably intertwined' with the state court's judgment." *Exxon Mobil Corp.* v. *Saudi Basic Indus. Corp.*, 125 S. Ct. 1517, 1523 n.1 (2005).

The "inextricably intertwined" aspect of *Feldman* can be a thorny issue, but over the years "[t]he most useful—and frequently quoted—definition of 'inextricably intertwined' comes from Justice Marshall's concurrence in *Pennzoil Co. v. Texaco, Inc.*[, 481 U.S. 1 (1987)]." Suzanna Sherry, *Judicial Federalism in the Trenches: The* Rooker-Feldman *Doctrine in Action*, 74 Notre Dame L. Rev. 1085, 1097 (1999). In *Pennzoil*, Justice Marshall observed that

> [w]hile the question whether a federal constitutional challenge is inextricably intertwined with the merits of a state-court judgment may sometimes be difficult to answer, it is apparent, as a first step, that *the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.* Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state-court judgment.

481 U.S. at 25 (Marshall, J., concurring in judgment) (emphasis added). Eleven of the thirteen circuit courts of appeals have used Justice Marshall's definition in deciding whether federal claims are "inextricably intertwined" with a state-court judgment within the meaning of *Feldman*. *See Hill* v. *Town of Conway*, 193 F.3d 33, 39 (1st Cir. 1999); *Hachamovitch* v. *DeBuono*, 159 F.3d 687, 694–95 (2d Cir. 1998); *Centifanti* v. *Nix*, 865 F.2d 1422, 1430 (3d Cir. 1989); *Plyler* v. *Moore*, 129 F.3d 728, 731–32

(4th Cir. 1997), *cert. denied*, 524 U.S. 945 (1998); *Anderson* v. *Charter Township of Ypsilanti*, 266 F.3d 487, 492–93 (6th Cir. 2001), *Lewis* v. *Anderson*, 308 F.3d 768, 772 (7th Cir. 2002), *cert. denied*, 538 U.S. 908 (2003); *Keene Corp.* v. *Cass*, 908 F.2d 293, 296–97 (8th Cir. 1990); *Fontana Empire Ctr., LLC* v. *City of Fontana*, 307 F.3d 987, 992 (9th Cir. 2002); *Varallo* v. *Sup. Ct. of Colo.*, 176 F.3d 490, 1999 WL 140161, at *1 (10th Cir. Mar. 16, 1999) (unreported decision); *Siegel* v. *LePore*, 234 F.3d 1163, 1172 (11th Cir. 2000) (en banc); *Johnson* v. *Way Cool Mfg.*, 20 Fed. Appx. 895, 898 (Fed. Cir. 2001) (unreported decision).[2]

In this case, the Eleventh Circuit affirmed the district court's conclusion that Petitioners' claims in federal court were "inextricably intertwined with the state condemnation proceedings" against them, holding that Petitioners should have presented their claims in the state-court proceedings. Pet. App. 5a (quoting *Garry* v. *Geils*, 82 F.3d 1362, 1368–69 (7th Cir. 1996)). As the district court correctly explained:

> If the Sophocleuses were to prevail in this case by convincing this court that the taking of their land was for a private use from January to August 1999, and were to win damages based on that claim, that would mean that the state court was wrong in concluding (1) that the condemnation was necessary and for a public use, and (2) that the compensation the Sophocleuses received was adequate.

Pet. App. 21a. In other words, "the Sophocleuses' claims directly implicate the correctness of the state court's judgment: if they are right that the State took their home

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[2] The Fifth Circuit and District of Columbia Circuit have not disagreed; they simply have not addressed Justice Marshall's definition.

for private use, then the state court was wrong to conclude that the condemnation was for a public use." Pet. App. 23a.

Under the "inextricably intertwined" aspect of the *Rooker-Feldman* doctrine—as refined in *Exxon Mobil*—the district court lacked subject-matter jurisdiction over Petitioners' federal-court claims.

### B. Petitioners Raised or Could Have Raised Their Claims in State Court.

Petitioners incorrectly maintain that they could not present their claims in their condemnation appeal to the state circuit court for trial de novo. *See* Pet. at 11. In fact, the district court correctly found that Petitioners *had* raised those claims in state court, albeit not in the same form as their claims in federal court. Pet. App. 19a–20a. Moreover, and in any event, Petitioners could have presented their claims in state court in essentially the same form they are in now—as counterclaims and third-party claims. The Supreme Court of Alabama has allowed a condemnee to bring a counterclaim for wrongful condemnation in a circuit court appeal for trial de novo. *See Ex parte Palughi*, 494 So. 2d 404, 407–08 (Ala. 1986) (allowing condemnee to pursue counterclaim for wrongful condemnation under prior law). Although *Ex parte Palughi* was decided under prior law, its holding that the Alabama Rules of Civil Procedure govern condemnation appeals to circuit court remains good law. *See State* v. *Reynolds*, 887 So. 2d 848, 852–54 (Ala. 2004) (quoting *Palughi*); Ala. Code § 18-1A-70 (1997) (Alabama Rules of Civil Procedure govern procedure for eminent domain except as otherwise provided in Alabama Eminent Domain Code). Those rules provide for permissive and compulsory counterclaims, *see* Ala. R. Civ. P. 13, and third-party claims, Ala. R. Civ. P. 14(a), and Petitioners could have asserted all of their present claims as counterclaims or third-party claims under those rules. *See*

*Palughi*, 494 So. 2d at 408 n.1 (noting Ala. Code § 18-1A-70).

Thus, as the court of appeals and the district court concluded, Petitioners' claims in this action are "inextricably intertwined" with the judgment in the state-court condemnation proceeding within the meaning of *Feldman*, and Petitioners did (or could have) presented their claims in state court. Accordingly, the courts below correctly determined that the district court lacked subject-matter jurisdiction.

## II. Petitioners Are Inviting the Federal Courts to Review and Reject the State-Court Judgment in Their Condemnation Proceedings.

Now apparently convinced that they were on the losing end of their state-court settlement, Petitioners seek to have a federal district court effectively reverse (at least in part) their state-court judgment and award them additional damages. As the district court recognized, to award additional damages for the alleged private use of Petitioners' property from January–August 1999 would require the district court effectively to reverse the state-court judgment that the taking was for a public use—at least for the eight months between January and August 1999.

Thus, this case fits the classic mold of *Rooker-Feldman* doctrine: "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil*, 125 S. Ct. at 1521–22. Petitioners artfully plead their grievances as distinct claims for damages, but the essence of their claims is nonetheless that the state court was wrong to hold that the State's taking was for a public purpose—at least for part

of the time the property was taken—and that the state court's compensation for the taking was inadequate. An award of damages to Petitioners in federal court would thus work a reversal, or at least a modification, of the state-court judgment in a fashion prohibited by *Rooker* and *Feldman*.

## III. Petitioners Allege No Conflict in the Circuits, and this Case Presents a Poor Vehicle for Further Refinement of the *Rooker-Feldman* Doctrine.

In their Petition, Petitioners do not allege any conflict among the courts of appeals on the application of the *Rooker-Feldman* doctrine to their federal claims. Moreover, as Respondent Reese & Howell, Inc., explains, the alleged conflict between the decision below and prior decisions of this Court is illusory. In particular, reconsideration in light of *Exxon Mobil* is not warranted because, as already shown, Petitioners fit the *Rooker-Feldman* paradigm of "state-court losers complaining of injuries caused by state-court judgments." *Exxon Mobil*, 125 S. Ct. at 1521–22.

In addition, this case presents a poor vehicle for further refinement of the *Rooker-Feldman* doctrine after *Exxon Mobil*. This is so, first, because the underlying "private use" claims are frivolous. *See Allegheny County* v. *Frank Mashuda Co.*, 360 U.S. 185, 199 n.1 (1959) (Clark, J., dissenting) (characterizing as frivolous respondents' claim that lease of strip of condemned land to contractor for storage of supplies while contractor expanded public airport constituted abandonment of public use). Even if a court were to accept Petitioners' assertion that the temporary use of their home by a contractor while engaged in widening a highway constituted a private use, such incidental use would not change the overarching character of the condemnation of Petitioners'

property for a public use. "The general rule is well settled that the exercise of eminent domain for a public purpose which is primary and paramount will not be defeated by the fact that incidentally a private use or benefit will result which would not of itself warrant the exercise of the power." *Eminent Domain: Combination of Public and Private Uses or Purposes*, 53 A.L.R. 9, 12 (1928); *see Hendersonville Light & Power Co.* v. *Blue Ridge Interurban Ry. Co.*, 243 U.S. 563, 569–70 (1917) (Holmes, J.) (sale of surplus electric power generated by dam was "a possible incident, necessary to prevent waste, of the primary public use"); *United States* v. *Chandler-Dunbar Water Power Co.*, 229 U.S. 53, 73 (1913) ("If the primary purpose [for building dam] is legitimate, we can see no sound objection to leasing any excess of power over the needs of the government."); *Kaukauna Water Power Co.* v. *Green Bay & Miss. Canal Co.*, 142 U.S. 254, 273 (1891) ("But if, in the erection of a public dam for a recognized public purpose, there is necessarily produced a surplus of water, which may properly be used for manufacturing purposes, there is no sound reason why the state may not retain to itself the power of controlling or disposing of such water as an incident of its right to make such improvement."); *Swan Lake Hunting Club* v. *United States*, 381 F.2d 238, 242 (5th Cir. 1967) ("Where both public and private use are to be made of property sought to be condemned, the exercise of the power will not be defeated if the private use is sufficiently subordinate to the public use as to be incidental to it."); *Gober* v. *Stubbs*, 682 So. 2d 430, 435 (Ala. 1996) (" ' "Once it is determined that the taking is for a public purpose the fact that private persons may receive benefit is not sufficient to take away from the enterprise the characteristics of a public purpose." ' ") (quoting *Florence* v. *Williams*, 439 So. 2d 83, 89 (Ala. 1983), in turn quoting *Redevelopment Agency of City & County of San Francisco* v. *Hayes*, 122 Cal. App. 2d 777, 804, 266 P.2d 105, 122, *cert. denied*, 348 U.S. 897 (1954)); *N. Ward Co.* v. *Bd. of Street Commr's of City of Boston*,

217 Mass. 381, 386, 104 N.E. 965, 967 (1914) ("Nor can it be said that this taking was invalid because made at the request of a contractor and because the land taken was intended to be used, for some time at least, by that contractor."); *see generally* 29A C.J.S. *Eminent Domain* § 29(c) (1992); 26 Am. Jur. 2d *Eminent Domain* § 55 (1996).

Second, this case presents a poor vehicle because the Court of Appeals' opinion in this case is not reported, and is not even reprinted in the *Federal Appendix*. Thus, the Court of Appeals' decision is unlikely to have much, if any, impact on the *Rooker-Feldman* doctrine.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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